

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,

PLAINTIFF,

v.

STATE OF GEORGIA,

DEFENDANT.

Civil Action No.
1:16-cv-03088-ELR

**JOINT MOTION FOR ENLARGEMENT OF TIME
AND ENTRY OF AMENDED SCHEDULING ORDER**

NOW COME the United States of America and the State of Georgia, by and through below counsel of record, and move this Court pursuant to Federal Rule of Civil Procedure 6(b) for an enlargement of time extending the fact discovery deadline to and including March 10, 2023 and for entry of a joint proposed amended scheduling order. The grounds for this motion are more particularly set forth in the accompanying memorandum of law.

Dated: January 27, 2023.

Respectfully submitted,

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**MEMORANDUM OF LAW IN SUPPORT OF
JOINT MOTION FOR ENLARGEMENT OF TIME
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Pursuant to Federal Rule of Civil Procedure 6(b), Plaintiff the United States of America (“United States”) and Defendant the State of Georgia (“State”) jointly request an extension of the discovery deadline set forth in this Court’s September 2, 2022 Order (*see* ECF 261) and entry of the attached proposed amended scheduling order.

Rule 6(b) permits the Court broad discretion in granting enlargements of time made prior to the expiration of the time originally permitted to make the subject filing. *See Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1366 (11th Cir. 1997) (“We recognize that district courts enjoy broad discretion in deciding how best to manage the cases before them.”); *Cable/Home Commc'n Corp. v. Network*

Prods., Inc., 902 F.2d 829, 859 (11th Cir. 1990) (discussing discretion afforded to district courts when ruling on requests for enlargements of time); *see also* Wright & Miller, *Federal Practice and Procedure* § 1165 (1987).

The parties have made significant progress with fact discovery since the discovery period opened in July 2020. During the first fourteen months of discovery: the United States served its First Set of Interrogatories and First Request for Production of Documents (*see* ECF 74, 75); the State served its written responses to those initial discovery requests (*see* ECF 84, 85) and its First Requests for Production of Documents (*see* ECF 89); the United States served its written responses to the State's first request for production (*see* ECF 90); the State served its First Interrogatories and Second Requests for Production of Documents (*see* ECF 99); the United States responded to those interrogatories and the second request for production (*see* ECF 101, 102); and the United States served 18 third-party document subpoenas on various regional GNETS programs and/or their fiscal agents (*see* ECF 108-113).

During the same time period, the parties worked with one another to reach agreement on a number of issues related to the vast amount of electronically stored information ("ESI") at issue in this matter, including the identification of relevant document custodians, application of search terms, and other e-discovery

considerations related to the parties' production of documents. The parties produced documents to one another on a rolling basis and worked cooperatively to address any issues that arose in the course of that production.

In the twelve months following the Court's entry of its September 14, 2021 Order extending discovery (*see* ECF 117), the parties continued to make significant progress. During this time, the United States received nearly 10,000 documents in response to the 18 third-party document subpoenas that it served on regional GNETS programs and/or their fiscal agents. After receiving and conducting an initial review of those documents, the United States attempted to negotiate voluntary site inspections of various regional GNETS program facilities. Ultimately, to obtain access to such facilities the United States was required to issue 77 third-party subpoenas for inspection of premises (*see, e.g.*, ECF 122-125, 136-147, 149). The United States negotiated the terms of those subpoenas with multiple parties, submitted discovery statements for those parties with whom it was unable to negotiate a resolution, and eventually filed two successful motions to compel compliance with several inspection subpoenas (*see* ECF 162-163, 175, 174, 179, 183, 193). Also, during this time, the United States and its experts conducted five and a half weeks of site inspections covering 18 regional GNETS programs and nearly 60 facilities. The United States

also took 21 depositions involving numerous state personnel and directors of regional GNETS programs (*see* ECF 135, 165-167, 206-208, 210-212, 214-223). The parties continued efforts to exchange written discovery during this period. In the spring of 2022, the United States issued its second request for production of documents to the State, and the State provided its response (*see* ECF 177, 194). In the summer of 2022, the United States issued its second set of interrogatories and third request for production of documents to the State (*see* ECF 228-229), six additional document subpoenas to regional GNETS programs (*see, e.g.*, ECF 252, 256-259), and a document subpoena to each of Georgia's 24 Community Service Boards (*see* ECF 231-251, 253-55).

In the nearly 6 months following the Court's entry of its September 2, 2022 Order extending discovery, the parties have continued to maintain an aggressive discovery schedule. During this time, the United States and its experts conducted 11 days of site visits covering 9 regional GNETS programs and 19 facilities. The United States also took 19 depositions involving numerous state personnel, directors of regional GNETS programs, and personnel at Community Service Boards (*see* ECF 236, 258, 262, 264-267, 269, 273, 280, 294, 304-305, 307, 311, 313, 315-316, 340-341). The parties continued efforts to exchange written discovery during this period. In September, the State responded to the United

States' Second Set of Interrogatories and Third Request for Production of documents (*see* ECF 263). In November of 2022, the United States issued its Fourth Request for Production of Documents to the State, and the State provided its response (*see* ECF 300, 309). In December of 2022, the United States issued its Fifth Request for Production of Documents, its Third Set of Interrogatories, and its First Request for Admissions (*see* ECF 338, 339, 342). Also in December, the Court granted the United States' Motion to Produce Third-Party Documents Containing Protected Information Under FERPA (*see* ECF 330). The United States is now preparing to produce thousands of relevant third-party documents to the State.

To date, the United States has produced 1,831 documents totaling more than 11,000 pages from more than 30 Department of Justice personnel involved in this litigation, and the State has produced more than 690,000 documents totaling more than five million pages from 50 custodians affiliated with the Georgia State Board of Education, the Georgia Department of Education, the Georgia Department of Behavioral Health and Developmental Disabilities, and/or the Georgia Department of Community Health.

The pleadings thus far filed, the information provided in the Amended Joint Preliminary Report and Discovery Plan (*see* ECF 68), and the substance of

the parties' April 2021, August 2021, December 2021, March 2022, June 2022, and December 2022 Joint Status Reports (*see* ECF 97, 105, 126, 164, 209, 308) outline the elements of this matter that cause the parties to respectfully move for an enlargement of time. The United States specifically alleges violations of Title II of the Americans with Disabilities Act by the State, affecting delivery of educational services to students with disabilities statewide. The State maintains that it cannot provide the relief the United States seeks because Georgia's local school districts, through their IEP teams, determine whether a student requires GNETS program services and because the school districts — not the State — operate the GNETS programs (of which no individual employed by the State is part).

In light of the parties' positions, this case involves a voluminous amount of ESI that is maintained in various databases and information systems by numerous custodians spanning several State agencies. Despite the parties' progress, there remains a limited amount of fact discovery to complete before the parties can proceed with expert discovery, including a small number of clean-up site visits, a few depositions, the last of paper discovery, and the exchange of privilege logs. The parties anticipate that this outstanding discovery can be completed by March 10, 2023.

Based upon the above, the United States of America and the State of Georgia respectfully request an enlargement of time, through and including March 10, 2023, to complete fact discovery in this case. For the Court's convenience, a proposed Order granting the enlargement of time and setting forth an amended schedule is attached.

Respectfully submitted,

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Certificate of Compliance

I hereby certify, pursuant to Local Rules 5.1 and 7.1D, that the foregoing motion and brief have been prepared using Book Antiqua, 13-point font.

/s/ Aileen Bell Hughes

AILEEN BELL HUGHES

Assistant United States Attorney

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Certificate of Service

I served this document today by filing it using the Court's CM/ECF system, which automatically notifies the parties and counsel of record.

January 27, 2023.

/s/ Aileen Bell Hughes

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Assistant United States Attorney

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AMENDED SCHEDULING ORDER

Having read and considered the United States of America and the State of Georgia's Joint Motion for Enlargement of Time and Entry of Amended Scheduling Order and for good cause shown, it is hereby ORDERED that the United States of America and the State of Georgia shall be granted an extension of time to complete fact discovery through and including March 10, 2023. The Court further ORDERS the parties to comply with the following scheduling deadlines:

Expert Discovery: The parties shall disclose the names and curriculum vitae of their experts by March 15, 2023 and shall exchange expert reports by May 5, 2023. The parties shall disclose rebuttal experts and exchange rebuttal expert reports by June 2, 2023. The parties may depose each side's respective

experts in depositions that do not exceed seven hours of testimony for each expert. Expert discovery shall be completed no later than July 14, 2023.

Post-Discovery Conference: The parties shall hold an in-person post-discovery settlement conference in accordance with Local Rule 16.3 no later than July 28, 2023.

Summary Judgment: The parties shall file any motions for summary judgment no later than August 11, 2023.

So ordered this _____ day of January, 2023.

ELEANOR L. ROSS
UNITED STATES DISTRICT JUDGE

Presented By:

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